

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Elizabeth Opurum, Plaintiff, -v- The Mount Sinai Hospital, and The Mount Sinai Medical Center, Inc., Defendants.	Civ. Action #: <u>Complaint</u> Jury Trial Demanded
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Plaintiff Elizabeth Opurum (“Plaintiff” or “Opurum”), by Abdul Hassan Law Group, PLLC, her attorney, complaining of Defendants The Mount Sinai Hospital, and The Mount Sinai Medical Center, Inc. (collectively “Defendants”), respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff alleges that she was employed by Defendants, individually and/or jointly, and pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216 (b), she is: (i) entitled to unpaid overtime wages from Defendants for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times her regular rate for such hours over forty in a week; and (ii) entitled to maximum liquidated damages and attorneys' fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. including 29 U.S.C. § 216(b).
2. Plaintiff further complains pursuant to New York Labor Law, that she is: (i) entitled to unpaid overtime wages from Defendants for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times her regular rate for such hours over forty in a week; and (ii) is entitled to maximum liquidated damages and attorneys' fees, pursuant to the New York Minimum Wage Act ("NYMWA"), N.Y. Lab. Law §§ 650 et seq., including NYLL § 663, and the regulations thereunder.
3. Plaintiff is also entitled to recover her unpaid wages, and wage deductions, under Article 6 of the New York Labor Law including Section 191, 193, and compensation for not receiving notices and statements required by NYLL 195, under Article 6 of the New York Labor Law

and is also entitled to maximum liquidated damages, interest, and attorneys' fees pursuant to Section 198 of the New York Labor Law.

4. Plaintiff also complains that she was terminated and discharged in discrimination and retaliation by Defendants because, in good faith, she complained of and opposed Defendants' refusal/failure to pay her required overtime wages. Such retaliatory termination violates the FLSA at 29 USC § 215 and NYLL § 215 and Plaintiff is entitled to and seeks to recover all damages available under these statutes.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's claim under the Fair Labor Standards Act pursuant to 29 U.S.C. § 216 (b).
6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and/or 29 USC § 216(b).
7. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2202, 2201.

THE PARTIES

8. Plaintiff Elizabeth Oporum ("Plaintiff" or "Oporum") is an adult, over eighteen years old, who currently resides in Queens County in the State of New York.
9. Upon information and belief and at all times relevant herein, Defendant The Mount Sinai Hospital ("MSH") was a New York corporation.
10. Upon information and belief and at all times relevant herein, Defendant The Mount Sinai Medical Center, Inc. ("MSMC") was a New York corporation.
11. At all times relevant herein, Defendants owned and operated the hospital at which Plaintiff

worked.

12. At all times relevant herein, Defendants, individually and/or jointly employed Plaintiff.

STATEMENT OF FACTS

13. Upon information and belief, and at all relevant times herein, Defendants owned and operated several hospitals providing medical care to the public.

14. Upon information and belief, and at all relevant times herein, Defendants, individual and/or jointly employed several hundred employees.

15. Plaintiff has been employed by Defendants, individually, and/or jointly from on or about May 13, 2019 to on or about April 23, 2020.

16. At all times relevant herein, Plaintiff was employed by Defendants to assist with patient care and well-being.

17. At all times relevant herein, Plaintiff was an hourly employee of Defendants and her last hourly rate was \$20.07 an hour.

18. Upon information and belief, and at all times relevant herein, Plaintiff worked about 42-45 hours each week for Defendants and likely more, 5-6 days a week.

19. At all times relevant herein, Plaintiff was not paid for all hours in a week, for each week during her employment with Defendants – Defendants withheld and willfully failed to pay Plaintiff all her wages due for all her hours worked in each week, including her overtime hours.

20. For example, On March 29, 2020 and April 10, 2020, Plaintiff worked 8 overtime hours (weekly hours over 40), on each of these days for Defendants but was never paid at a rate of 1.5 times her regular rate of pay for each and all of these overtime hours.

21. A few days prior to her termination on or about April 23, 2020 and on the day of her termination, Defendants required Plaintiff to work overtime hours and Plaintiff asked whether she would be paid for the overtime hours at her straight regular rate or at the required overtime rate – Defendants responded that the overtime hours would be paid at Plaintiff's straight regular hourly rate. In good faith, Plaintiff complained, opposed and objected to being required to work overtime hours by Defendants without being paid the overtime rate required by law. In response to Plaintiff's opposition and objections, Defendants terminated Plaintiff's employment as a result.
22. A more precise statement of the hours and wages may be made when Plaintiff Oporum obtains the wage and time records Defendants were required to keep under the FLSA and NYLL. *Accurate* copies of Plaintiff's wage and time records that Defendants were required to keep pursuant to 29 USC 211, 29 CFR 516 and NYLL 195, 12 NYCRR 142.2-6 are incorporated herein by reference.
23. At all times relevant herein, Defendants did not provide Plaintiff with the notice(s) required by NYLL 195(1).
24. At all times relevant herein, Defendants did not provide Plaintiff with the statement(s) required by NYLL 195(3) – the statements provided to Plaintiff did not contain all the hours worked by Plaintiff and did not state rates of pay, among other deficiencies.
25. Upon information and belief, and at all times relevant herein, Defendants had revenues and/or transacted business in an amount exceeding \$500,000 annually.
26. At all times applicable herein, Defendants conducted business with vendors and other businesses outside the State of New York.
27. At all times applicable herein and upon information and belief, Defendants conducted business in interstate commerce involving the purchase medical equipment and supplies.

28. Defendants as a regular part of their business, makes payment of taxes and other monies to agencies and entities outside the State of New York.
29. Defendants as a regular part of their business, engaged in credit card transactions involving banks and other institutions outside the state of New York.
30. At all times applicable herein and upon information and belief, Defendants transacted business with insurance companies, banks and similar lending institutions outside the State of New York.
31. At all times applicable herein and upon information and belief, Defendants utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail and telephone systems.
32. At all times relevant herein and for the time Plaintiff was employed by Defendants, Defendants failed and willfully failed to pay Plaintiff an overtime rate of 1.5 times her regular rate of pay for all hours worked in excess of forty hours in a week for each week in which such overtime was worked.
33. Upon information and belief, and at all relevant times herein, Defendants failed to display federal and state minimum wage/overtime posters.
34. Upon information and belief, and at all relevant times herein, Defendants failed to notify Plaintiff of her federal and state minimum wage and overtime rights and failed to inform Plaintiff that she could seek enforcement of such rights through the government enforcement agencies.
35. "Plaintiff" as used in this complaint refers to the named Plaintiff.
36. The "present" or the "present time" as used in this complaint refers to the date this complaint was signed.

AS AND FOR A FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT - 29 U.S.C 201 et Seq. (Unpaid Overtime)

37. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 36 above as if set forth fully and at length herein.
38. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the FLSA – 29 USC 201 et Seq.
39. At all times relevant to this action, Plaintiff was engaged in commerce and/or in the production of goods for commerce and/or Defendants, individually and/or jointly, constituted an enterprise(s) engaged in commerce within the meaning of 29 U.S.C. § 207.
40. At all times relevant herein, Defendants, individually and/or jointly, transacted commerce and business in excess of \$500,000.00 annually or had revenues in excess of \$500,000.00 annually.
41. At all times relevant herein, Defendants failed and willfully failed to pay Plaintiff overtime compensation at rates of at least 1.5 times her regular rate of pay for each and all hours worked in excess of forty hours in a work week, in violation of 29 U.S.C. § 207.

Relief Demanded

42. Due to Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants individually and/or jointly, her unpaid overtime compensation, maximum liquidated damages, attorneys' fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

AS AND FOR A SECOND CAUSE OF ACTION

NYLL 650 et Seq. and 12 NYCRR 142-2.2 etc. (Unpaid Overtime)

43. Plaintiff alleges, and incorporates by reference the allegations in paragraphs 1 through 41 above as if set forth fully and at length herein.

44. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the New York Labor Law, §§ 2 and 651 and the regulations and wage orders thereunder including 12 NYCRR § 142.
45. At all times relevant herein, Defendants failed and willfully failed to pay Plaintiff overtime compensation at rates not less than 1.5 times her regular rate of pay for each and all hours worked in excess of forty hours in a work week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.2.

Relief Demanded

46. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, her unpaid overtime compensation, prejudgment interest, maximum liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor L. § 663(1) and the regulations thereunder.

AS AND FOR A THIRD CAUSE OF ACTION

NYLL § 190, 191, 193, 195 and 198

47. Plaintiff alleges and incorporates each and every allegation contained in paragraphs 1 through 46 above with the same force and effect as if fully set forth at length herein.
48. At all times relevant to this action, Plaintiff was employed by Defendants, individually and/or jointly, within the meaning of the New York Labor law, §§ 190 et seq., including §§ 191, 193, 195 and 198 and the applicable regulations thereunder.
49. Defendants violated and willfully violated NYLL §§ 190 et seq., including §§ 191, 193 and 198, by failing to pay Plaintiff all her non-overtime wages, and overtime wages, Plaintiff was entitled to, as required by NYLL §§ 191, 193 and 198.
50. At all times relevant herein, Defendants failed and willfully failed to provide Plaintiff with the notice(s) required by NYLL 195(1) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys' fees and costs

pursuant to NYLL 198 including NYLL 198(1-b), as well as an injunction directing Defendants to comply with NYLL 195(1).

51. At all times relevant herein, Defendants failed and willfully failed to provide Plaintiff with the statement(s) required by NYLL 195(3) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys’ fees and costs pursuant to NYLL 198 including NYLL 198(1-d), as well as an injunction directing Defendants to comply with NYLL 195(1).

Relief Demanded

52. Due to Defendants’ New York Labor Law Article 6 violations including violation of sections 191, 193 and 198, Plaintiff is entitled to recover from Defendants, her entire unpaid wages, including her unpaid non-overtime and overtime wages, wage deductions, maximum liquidated damages, prejudgment interest, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys’ fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198.

AS AND FOR A FOURTH CAUSE OF ACTION –
FLSA RETALIATION/DISCRIMINATION - 29 U.S.C § 215

53. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 52 above as if set forth fully and at length herein.
54. At all times relevant to this action, Plaintiff was employed by Defendants, individually, and/or jointly, within the meaning of the FLSA including 29 USC § 207 and 29 USC § 215.
55. At all times relevant herein, Defendants were covered persons or entities within the meaning of 29 USC § 215.
56. Defendants discharged/terminated Plaintiff’s employment with them in retaliation and discrimination and in violation of the FLSA at 29 USC § 215 for engaging in protected activity such as opposing and complaining in good faith about Defendants’ refusal/failure to pay Plaintiff wages required under the FLSA as further set forth above.

Relief Demanded

57. Defendants' FLSA violations, have caused and proximately caused Plaintiff to suffer damages and Plaintiff is entitled to and seeks to recover from Defendants all damages available under 29 USC §§ 215, and 216, including her lost wages, reinstatement, maximum liquidated damages, attorneys' fees, and costs of the action, pursuant to 29 U.S.C. §§ 215, 216(b).

AS AND FOR A FIFTH CAUSE OF ACTION
RETALIATION/DISCRIMINATION - NYLL § 215

58. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 57 above as if set forth fully and at length herein.

59. At all times relevant herein, Plaintiff was employed by Defendants, individually, and/or jointly within the meaning of the New York Labor Law §§ 2, 215 and 651 and the regulations thereunder.

60. At all times relevant herein, Defendants were covered persons or entities within the meaning of New York Labor Law §§ 2, 215 and 651 and the regulations thereunder.

61. Defendants discharged/terminated Plaintiff's employment with them in retaliation and discrimination and in violation of the NYLL § 215 for engaging in protected activity such as opposing and complaining in good faith about Defendants' refusal/failure to pay Plaintiff wages required under the NYLL as further set forth above.

62. A notice of this action/claim was provided to the NYS Attorney General pursuant to NYLL § 215 prior to the filing of this action.

Relief Demanded

63. Defendants' New York Labor Law violations, have caused and proximately caused Plaintiff to suffer damages and Plaintiff is entitled to recover from Defendants all available damages, including her lost wages, reinstatement, maximum liquidated damages, other damages,

attorneys' fees, and costs of the action, pursuant to NYLL including § 215.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

64. Declare Defendants, individually, and/or jointly, to be in violation of the Plaintiff's rights under the Fair Labor Standards Act, Article 6 of the New York Labor Law, the New York Minimum Wage Act, and the Regulations thereunder;
65. As to the **First Cause of Action**, award Plaintiff her unpaid overtime wages due under the FLSA, together with maximum liquidated damages, costs and attorneys' fees pursuant to 29 USC § 216(b);
66. As to her **Second Cause of Action**, award Plaintiff her unpaid overtime wages due under the New York Minimum Wage Act and the Regulations thereunder including 12 NYCRR §§ 142-2.2, together with maximum liquidated damages, prejudgment interest, costs and attorneys' fees pursuant to NYLL § 663;
67. As to her **Third Cause of Action**, award Plaintiff all outstanding wages, including unpaid non-overtime wages (promised double time pay for Sunday shifts), and overtime wages, wage deductions, plus maximum liquidated damages, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198, and issue an injunction directing Defendants to comply with NYLL 195(1) and NYLL 195(3).
68. As to her **Fourth Cause of Action**, award Plaintiff all damages available under 29 USC §§ 215, and 216, including her lost wages, reinstatement/front pay, maximum liquidated damages, attorneys' fees, and costs of the action, pursuant to 29 U.S.C. §§ 215, 216(b).
69. As to her **Fifth Cause of Action**, award Plaintiff all damages available under NYLL § 215, including her lost wages, reinstatement/front pay, maximum liquidated damages, other damages, attorneys' fees, and costs of the action, pursuant to NYLL including § 215;

70. Award Plaintiff prejudgement interest on all monies due;
71. Award Plaintiff any relief requested or stated in the preceding paragraphs but which has not been requested in the WHEREFORE clause, in addition to the relief requested in the wherefore clause;
72. Award Plaintiff such other, further and different relief as the Court deems just and proper.

**Dated: Queens Village, New York
May 4, 2020**

Respectfully submitted,

Abdul Hassan Law Group, PLLC

/s/ Abdul Hassan
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